

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and

Hon'ble Mr..JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF GIFT TAX

Versus

ESTATE OF AMBALAL SARABHAI

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Appearance:

MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 19/11/98

ORAL JUDGEMENT(Per:Balial.J)

Two questions of law as stated hereinafter have been referred by the Income-tax Tribunal, Ahmedabad Bench 'B' at the instance of revenue arising out of its appellate order in C.T.A. No. 41/81 for the assessment

year 1972-73 and another question has also been referred at the instance of the assessee arising out of the same order.

The questions referred at the instance of revenue:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the donation of rupees two lakhs made by the assessee to the Congress Party was not liable to Gift-tax?
2. Whether in the facts and circumstances of the case, the Tribunal was right in applying the Board's Circular of 5.1.65 to the case of the assessee ?

The question referred at the instance of assessee

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amount in question paid to the ruling party was voluntary and without consideration and hence liable to gift-tax under the provisions of Gift-tax Act 1958?
2. The facts and circumstances in which these questions had arisen are that in the year 1972 relevant to assessment year 1972-73 the assessee made a donation of Rs. 2 lacs to the Congress Party on 15.2.1972. The Gift Tax Officer initiated proceedings to tax said amount of donation under section 16(1)(a) of the Gift-tax Act. In pursuance thereof the assessee filed his return stating that the Gift -tax is Nil. The assessee has urged that the amount paid to the political party was not voluntary but was for business considerations and was an expenditure for the purpose of business. He therefore, claimed that either it is payment for consideration and not a gift and if it is be gift, it being for the purpose of business is exempt under section 5(1)(xiv) of the Gift Tax Act.

The Tribunal found that the donation of the amount was voluntary and without consideration and would fall within the mischief of expression "Gift". This part of the controversy falls within the question referred at the instance of the assessee. Having carefully examined the statement of the case, we are of the opinion that the Tribunal has reached this finding of fact on appreciation

of evidence. It does not involve any question of law nor the same is vitiated on any ground. The Tribunal has stated that there is no material to show that there was any element of coercion or threat to its business which had prompted the assessee to make the said donation. We therefore, answer the question at the instance of the assessee in the affirmative that is to say in favour of the revenue and against the assessee.

3. In connection with the questions referred at the instance of the revenue it may be noticed that the Tribunal found that the assessee was involved in carrying on business of money-lending and had made this donation through its account in SKP. The claim of the assessee was that this is for the benefit of the entire group of Sarabhai concerns. The Tribunal noticed the subsequent development of formation of partnership and ultimately a limited company taking over the business. It opined that as it was not for the benefit of assessee's own business but for other businesses carried on by different entities it cannot be said that the gift was made in the course of money lending business which the assessee was carrying on. It found it difficult to accept the submission that any nexus between the donation and the business of the assessee is established. Yet merely, relying upon the circular issued by the Central Board of Direct Taxes dated 5.1.60, the Tribunal has allowed the claim of the assessee to exemption by holding that the donation to political party must be deemed to be for the purpose of business. We are informed that the question of applicability of the circular and allowing exemption merely by reference to the circular came up for consideration before this Court in the case of Commissioner of Gift Tax vs Eastern India Industries 232(1998) ITR 27 and the Court has rejected like contention of the assessee in that case solely founded on the said circular by finding that the circular was wrongly relied upon.

4. The court found that the circular has been issued in the wake of a decision of Bombay High Court in Jayantilal Ranchhoddas Koticha vs. Tata Iron and Steel Co. Ltd. {1957} 27 Comp. Case 604 in which it was observed that if an individual can contribute to the political funds of a party, in law it is difficult to understand how a company can be prevented from doing so. These observations were in the light of the provisions of the Companies Act while considering the question whether the company is prohibited from making contribution to the of a political party. The court further held that the observations in the context of the provisions of

Companies Act cannot be read for the purpose of considering section 5(1)(xiv) of the Act and the circular issued by the Board cannot govern the interpretation of the statute when the courts are called upon to do it. This decision directly applies to the facts of the present case.

5. We may also, point out that the question whether the revenue authorities are bound to follow circular issued by the Board for the benefit of subject will also not arise in this case inasmuch as the circular clearly indicates that it has been issued only with respect to the companies. Circular operates only where the donation is made by a company to a political party provided the same is authorised by the memorandum and articles of Association of the company. This circular itself does not apply in cases of assessees other than companies. It also does not apply to a company which is not having specific clause in its Memorandum and Articles of Association. Thus really the question about applicability of circular does not arise at all.

6. The question whether the contribution to a political party, which is found by the Tribunal is a voluntary and a gift is exempt u/s 5(1) (xiv) must be answered on Tribunal's own finding about purpose for which such gift is made and not by demanding something contrary to finding reached on its own appreciation of facts. It is pertinent to note that any administrative instruction cannot substitute a statute. In the case of the assessee, it was found by the Tribunal that there was no reasonable nexus between the giving of gift and the business which the assessee was carrying on. In view of this finding and deeming fiction which not available in aid of the assessee, cannot be extended by analogy.

7. We are of the opinion that the Tribunal was not justified in holding that the claim of assessee would fall within the mischief of section 5(1)(xiv).

8. Accordingly both the questions referred to us at the instance of revenue are answered in the negative that is to say in favour of the revenue and against the assessee.

9. There shall be no order as to costs.

(Rajesh Balia.J)

(A.R.Dave.J)

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